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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,539	02/20/2004	Marie D. Radatti	E-2624	7445
7590 09/24/2008 Harding, Earley, Follmer & Frailey 86 The Commons at Valley Forge East 1288 Valley Forge Road PO Box 750 Valley Forge, PA 19482-0750				
EXAMINER				
BECKER, DREW E				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
09/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/783,539

**Applicant(s)**

RADATTI ET AL.

**Examiner**

Drew E. Becker

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 7-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 7-15, 32 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-31, 34-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/28/08 has been entered.

### ***Election/Restrictions***

2. Claims 1-4, 7-15, and 32-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/6/07.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 29-30 and 34-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 29 recites the limitation "the shells" in line 8. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 30 recites the “shell is in one or more parts, which are combined....” It is not clear how a single part can be “combined” with itself.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 16, 19-21, and 26-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Lampi et al [Pat. No. 5,465,654].

Lampi et al teach method for frying foods (column 5, line 2) by providing a shell with two plates joined along their edges by a hinge (Figure 1, #10-12), a first open configuration where the shell is loaded with food (Figure 1; column 7, lines 4-6), a closed configuration used during cooking (Figure 2; column 7, lines 6-12), frying the food by placing the shell in a convection cooking apparatus and immersing the shell in a cooking media such as hot air (column 7, lines 49-53), maintaining the air separate from the shell interior due to the closed shell (Figure 2), inherently shaping the pancake and waffle batter during cooking (column 5, line 45), the shell being made from highly-conductive materials (column 5, line 31), the shell having a groove for injection of batter from an extrusion device such as a syringe (column 5, lines 44-54; Figure 3, #16-17).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 16-20 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyon et al [Pat. No. 2,244,193] in view of Wallard [Pat. No. 3,831,508]

Guyon et al teach a method for cooking food by providing a shell including two plates (Figures 1, #10-11), opening the shell, placing food into the open shell, closing the shell, and placing it in the frying oil (page 1, column 1, lines 24-34), the oil being at 375-425°F (page 1, column 2, line 2), the food inherently being shaped during its preparation, and the metal plates inherently providing conductive heating of the food contained within the device. Guyon et al do not recite the plates being hinged. Wallard teaches a method for cooking food by providing a shell including two plates which are hinged together (Figures 9-12) and which submerged in a cooking media (column 4, line 28). It would have been obvious to one of ordinary skill in the art to incorporate the hinged connection of Wallard into the invention of Guyon et al since both are directed to methods of cooking food in a shell, since Guyon et al already taught using any suitable clamping means (page 1, column 2, line 15), since cooking shells were commonly hinged in order to provide easier opening as shown by Wallard, and since a hinged connection would enable and easier opening and closing of the shell of Guyon et al as compared to a slow screw closure. The claims would have been obvious because the

substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

11. Claims 16-21, 26-30, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dembecki [Pat. No. 4,313,964] in view of Wallard.

Dembecki et al teach a method for cooking food by providing a shell including two plates (Figures 1, #10 & 15), opening the shell, placing dough into the open shell, closing the shell, and placing it in the frying oil (Figure 6), the oil being at 350-375°F (column 5, line 22), plural shells linked together (Figure 5a, #46), the food inherently being shaped during its preparation, and the metal plates inherently providing conductive heating of the food contained within the device. Dembecki et al do not recite the plates being hinged. Wallard teaches a method for cooking food by providing a shell including two plates which are hinged together (Figures 9-12) and which submerged in a cooking media (column 4, line 28). It would have been obvious to one of ordinary skill in the art to incorporate the hinged connection of Mendez into the invention of Dembecki et al since both are directed to methods of cooking food in a shell, since Dembecki et al already included separate shell plates (Figure 1, #10 & 15), since cooking shells were commonly hinged in order to provide easier opening as shown by Wallard, and since a hinged connection would enable and easier opening and closing of the shell of Dembecki as compared to a slow screw closure. The claims would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

12. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dembecki, in view of Wallard, as applied above, and further in view of Aurio et al [20060099324] and Young et al [Pat. No. 6,048,564].

Dembecki and Wallard teach the above mentioned concepts. Dembecki and Wallard do not recite the dough having konjac glucomannan, animal-based protein concentrate, and baking powder. Aurio et al teach a dough product comprising konjac glucomannan (paragraph 0024) and animal-based protein concentrate (paragraph 0033) as well as mixing (paragraph 0085) which naturally would have provided aeration of the mixture. Young et al teach a method for making dough comprising konjac glucomannan (column 4, lines 29-49) and baking powder (column 17, line 37). It would have been obvious to one of ordinary skill in the art to incorporate the konjac glucomannan, animal-based protein concentrate, and baking powder of Aurio et al and Young et al into the invention of Dembecki, in view of Wallard, since all are directed to methods of making food, since Dembecki already included dough as the food but simply did not list its ingredients, since Aurio et al teach that konjac glucomannan (paragraph 0024) and animal-based protein concentrate (paragraph 0033) were commonly used in conjunction on food, since Young et al teach that doughs containing konjac glucomannan commonly had baking powder to provide leavening (column 17, line 37), and since all of these ingredients were commonly used in doughs in order to provide the desired taste, texture, and aroma.

13. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dembecki, in view of Wallard, as applied, and further in view of Henessey [Pat. No. 6,508,166].

Dembecki and Wallard teach the above mentioned concepts. Dembecki and Wallard do not recite the first shell having a c-shaped linkage, the second shell having a pin linkage, and connecting them. Dembecki teaches linking the plates via a c-shaped linkage and a pin linkage (Figure 3). Henessey teaches a method for molding food by providing removable molds which are linked together (Figure 3-4). It would have been obvious to one of ordinary skill in the art to combine the teachings of Henessey with Dembecki, in view of Wallard, to provide shells linked by a c-shaped linkage and pin linkage since all are directed to methods of molding dough, since Dembecki already taught c-shaped linkages and pin linkages to link the shell plates (Figure 3), since Henessey teaches removably linking the plural shells (Figure 3-4), and since removably linking plural shells via the linkages of Dembecki would have provided increased cooking flexibility to the operator by allowing them to cook the desired quantity of food in a single or plural molds.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Porter et al [Pat. No. 2,323,623], Ibex [Pat. No. 3,236,196], Batista et al [Pat. No. 3,161,156], Davis [Pat. No. 1,957,133], McNair [Pat. No. 4,066,797], Wilk et al [US 2002/0146494A1], Robertson [Pat. No. 2,204,699], Janssen [Pat. No. 3,946,654], MacGeorge et al [Pat. No. 5,865,103], Giovannetti [Pat. No.



1,596,652], and Schneider et al [US 2006/0117963A1]. Teach methods for frying, molding, and cooking.

### ***Response to Arguments***

15. Applicant's arguments with respect to claims 16-31 and 34-35 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the references cannot be combined, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., oil as the cooking media, dough as the food in all of the claims, the exclusion of heat transfer except by conduction, and the exclusion of locks and closures) are not recited in the rejected claim(s). Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the use of hinged closure in the methods of Guyon et al and Dembecki, the claims would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1794